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ABSTRACT

The question of whether foundations should engage in activities having a bearing on public policy development is discussed. Tax exempt private foundations have had a long, controversial history of participation in public policy formation. They contribute to policy development by means of various techniques that include support of established institutions to conduct policy-oriented research, investigation or analysis of issues with policy implications, conferences, partnerships with government on policy related issues, special research commissions, monitoring of governmental programs to assess their impact and effectiveness, and projects to inform citizens of their right to register and vote. Under the 1969 Tax Reform Act, foundations do have the legal right to participate in public policy formation. At issue, however, is whether foundations tend to bring a set of values into play in their program determination and in making or withholding grants. However, no foundation, can be totally objective because the human beings who manage it have values and shape the foundation's collective judgment. Nevertheless, if the role is played conscientiously and is informed at every stage by candor, openness, and integrity, the public will accept the foundation and it will maintain a viable position in the shaping of public policy. (Author/DE)

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Foundations and public policy formation

Carnegie Corporation of New York is a philanthropic foundation created by Andrew Carnegie in 1911 for the advancement and diffusion of knowledge and understanding. Its present total assets, at market value, are about $200 million. Approximately 7 percent of the income may be used in certain British Overseas Commonwealth areas; all other income must be spent in the United States.

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Foundations and public policy formation

Among the most difficult and important issues facing foundations is the question of the legitimacy and feasibility of their participation in public policy formation. In this function is to be found what is very possibly the most substantial opportunity foundations have today for service to the nation but also, perhaps, their greatest vulnerability.

Public policy is in essence the entire body of goals, plans, directives, and procedures, both domestic and foreign in their thrust, through which the common, or general, interest of the nation is advanced. The formal enactment of public policy, which of course takes place at all levels of government, is the responsibility of elected or appointed officials operating within a constitutional framework and accountable through representative political institutions. While it is expressed in a multiplicity of detailed laws, regulations, executive orders, judicial decisions and other forms, it rests ultimately on certain broad principles, most notably those expressed in the Declaration of Independence and the Constitution.

The processes which lead up to formal enactment of public policy in this country are extraordinarily complex. It is a deliberate part of our system that these processes are thrown open to wide citizen participation, involving input from, and interaction among, elected and appointed officials, political parties, the communications media, industry, trade associations, trade unions, professional associations, citizen action and many other groups, and, finally, the charitable sector with its wide range of private, nonprofit organizations. This intricate pre-enactment process serves not only as an instrument for the development of public policy but also as a means of mediating and reconciling the claims of conflicting interests in the society.

Foundations, as part of the charitable sector, have throughout their

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history in this country participated in the process of public policy formation. In general, almost anything a foundation does may in time affect some aspect of public policy. Under discussion here, however, is foundation action related to specific, identified issues, where the principal purpose has been to promote public discussion of an issue and shed light on it without respect to a specified outcome, or, less often, to advance a particular view of how public policy should develop.

Although the foundation role in such activity has a long and honorable history, the concept has always been controversial. While a few critics have claimed that foundations were not energetic and effective enough in helping shape public policy, most of their detractors have considered them too influential in this regard. From the populist left, particularly in an earlier era, has come the view that foundations, being closely associated with great industrial or financial wealth, power and privilege, have deliberately promoted conservative social and economic doctrines. The populist right, on the other hand, has made the charge that they are too liberal, even "communistic," in the causes they espouse.

The real nature of these concerns, whether expressed from the left or the right, is not always easy to understand fully, but at least two of its elements are reasonably clear. First, there is the notion that foundations are an organized, purposeful, secret and even sinister force, operating in an environment almost totally protected from any form of public oversight or supervision. Even middle-of-the-road observers have thought of them as having a considerable degree of homogeneity. Virtually all critics have attributed to them a position of power quite out of proportion to reality. While seeing nothing particularly wrong in a wide assortment of non-charitable, tax-exempt interest groups being permitted to influence the legislative process through direct lobbying, they have felt uncomfortable about the charitable sector, and especially foundations, doing this. Their doubts, moreover, have extended well beyond just lobbying to *any* foundation action which seems calculated to influence public policy, seeing this as *ipso facto* tantamount to "engaging in politics."

Secondly, there is a belief that the tax-exemption of foundations puts them in the special favored position of in effect spending public funds—funds that otherwise would "belong" to government—without being accountable to the people and their elected representatives. This principle, if ever fully established, would of course apply logically to *all* tax-exempt entities and make even churches answerable to public authority. Regardless of their lack of merit, these two elements of concern about foundation influence have had wide currency, leading many people to conclude that as a price for their privileged position, foundations should be quarantined from the mainstream controversies of the nation and prevented from infecting its body politic with their "pernicious" ideas!

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Most of the time these fears have lain dormant just below the surface of the nation's political life, but periodically they have burst into the open, as in the Congressional investigations of foundations in 1915, 1952, 1953, and once again in 1969 in connection with the passage of the Tax Reform Act. This time Congress decided, after a good deal of deliberation, that it was *not* in the public interest to prohibit foundations from taking part in the broad and many-faceted process through which public policy is developed here in the United States. On the contrary, it specifically authorized them to "make available nonpartisan analysis, study and research" and to engage in discussion and comment on "policy problems, social and economic issues and other broad issues where such activities would be considered educational under existing law." Congress, it is true, did prohibit foundations from any direct lobbying (except in their own defense), either with legislators and other government officials or with the general public at the grass roots level in regard to specific pieces of legislation under current consideration, and it also ruled out any interference in political campaigns. But it definitely did not prohibit foundations from concerning themselves with policy issues just because these "might be expected to be dealt with ultimately by government."

The question, therefore, of whether foundations could legally engage in activities having a bearing on public policy development was definitely settled in 1969. However, the negative and even hostile atmosphere in which discussion of this issue took place in the Congress left just the opposite impression in the minds of many people in the Congress, in the press, in the interested public, and in foundations themselves. To them the Tax Reform Act, at least in spirit, was clearly intended to discourage foundation involvement in public policy matters. As a result, a paradoxical situation emerged, one that is still with us, in which foundations have been assured that they have every right to engage in such activities but at the same time have somehow been given a message that they would be unwise to do so.

In these circumstances there are many people involved in the management of foundations, as trustees or administrators, who believe the avoidance of anything even remotely controversial of a public policy nature is the only sensible course to follow. One can understand this position, especially when there are well-informed observers who assert it would take only one major, well-publicized mistake in the public policy area by a large foundation to cause the Congress to impose harsh new controls on the entire field. This cautious, fearful, keep-to-the-storm-cellar approach is defeatist, however, and if adhered to by many foundations must inevitably lead to a progressive decline of morale in the field and the eventual extinction of foundations as a significant constructive force in the nation's life.

An alternative and more persuasive view, which some foundation trustees and administrators hold just as strongly as the apostles of low-profile cautiousness hold theirs, is that the only ultimate protection for foundations is to

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remain relevant, necessary institutions—whatever the risks entailed. The best way for foundations to do this is to be constantly sensitive to public policy issues in the fields in which they operate and not be afraid to initiate or support activities that relate to these issues. Indeed, the greatest justification for foundations continuing to enjoy tax-exempt status lies in their making the maximum contribution they can, within their spheres of interest and competence and within the limits of the law, to the development of enlightened public policy for the nation.

This argument is firmly based because it is rooted in the nature of the American social and political system. In this country we have never thought of the concept of citizen participation in democratic self-government as being confined to the ballot box, essential as that is. We have always recognized a second important element, the right of citizens to advance what they conceive to be the common good through their own initiatives carried out by means of private organizations and associations. Indeed, this second string to the bow of American democracy is a good deal older than the first, since it was well established long before the nation achieved its independence.

Integral to this concept of democratic self-government has been the notion that the private side of American life not only should be permitted to contribute to the process of public policy formation but should be actively *encouraged* to do so. The charitable sector is an indispensible participant in the debate because the myriad institutions which comprise it constitute a rich storehouse of important knowledge and experience it would be foolish to overlook. Foundations, as part of this sector, have special responsibilities, sometimes as sources of expertise in themselves but more often as the funders of other charitable organizations capable of making a contribution. Were they to be debarred from engaging in the process of public policy formation, the role of the charitable sector at large would be seriously undermined. The end result could be not only an impoverishment of the debate on public policy but a weakening of the capacity of private citizens to challenge entrenched public authority.

Techniques and procedures

The techniques that foundations can employ to play a part in public policy formation are many and varied. Those that have been well known through much of foundation history include the funding of: established institutions to conduct research; investigation or analysis with policy implications; conferences aimed at providing solutions to specific policy issues; specially created new organizations to work in particular policy areas; *ad hoc* commissions to study important issues and report to the nation; partnerships with governmental bodies in the launching of new policy-related ventures; information programs aimed at educating the public about policy issues; targeted programs to train individuals for special policy-making roles; and

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demonstration projects designed to try out experimental new policies on a scale large enough to test their suitability for general adoption by public authority.

Some newer techniques, evident principally in recent years, include the support of: preparatory work for litigation aimed at testing policy issues in the courts and validating new positions; the monitoring of governmental programs to assess their effectiveness and impact; new organizations created specifically to give a voice in policy issues to minorities, the poor and other groups previously excluded; and, lastly, projects designed to inform citizens of their constitutional right to register and vote.

Some of these techniques can entail direct action by a foundation itself, for example, the creation of a special commission to study a policy issue and report to the public, or the holding of a conference. Most techniques, however, involve a partnership between a foundation and an operating organization, in which the foundation provides money and sometimes counsel but leaves the doing of the job to its grant recipient. At a later stage the foundation can take on the additional function of helping give wide public dissemination to the results of the project. It is through the dissemination process, in fact, that foundations can sometimes have their greatest impact on the shaping of public policy. This, too, is an activity that can be furthered through a variety of techniques, such as the publication and distribution of books and other printed materials, press releases, press conferences, discussions with individual reporters and editors, conferences for policy makers and even the production of television programs. If a foundation wishes to maximize its effectiveness in the public policy arena, it must have an active and imaginative dissemination program.

Problems and safeguards

Engaging in activities intended to help shape public policy has its problems for a foundation. With even a modicum of care it should not run afoul of the requirements of the Tax Reform Act, because there are many ways it can legitimately influence public policy without coming even close to doing anything illegal. The problems, rather, are ones that relate on the one hand to external perception of a foundation's position in society—its general reputation, its credibility with specific groups of citizens, and the view other foundations have of it—and, on the other hand, to its own internal perception of itself as an institution.

A frequently discussed problem connected with foundation participation in public policy formation is the one of objectivity—what this means and how far it must be honored. Stated another way, the issue is one of whether foundations, either consciously or unconsciously, do tend to bring a set of values into play in their program determination and in the making or withholding of grants, and, if so, to what extent the influence of these values is legitimate.

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Values of course are of many kinds, ethical, religious, esthetic, philosophical, or political, and are extremely hard to define. What are values to one person are no more than unthinking prejudice and predilection to another. Values also are often in conflict with one another as, say, in the abortion issue or in the age-old conflict between liberty and justice which has its contemporary expression in the controversial issue of affirmative action.

There does, however, seem to be one broad set of values which all foundations in this country will probably share, the values embodied in what Gunnar Myrdal, in his brilliant study some years ago of the Negro in American life, called the American Creed. Briefly, this Creed encompasses a belief in the essential dignity of the individual human being, in the fundamental equality of all men and women, and in certain inalienable rights to freedom, justice and a fair opportunity. It has its origins in the philosophy of the Enlightenment, in the moral precepts common to the world's great religions, and in the English common law. If a foundation espouses such a set of values, it will have a broadly humanitarian outlook that is bound to affect the nature of its involvement in public policy issues, turning it instinctively toward those issues which have to do with bettering the condition of the least fortunate members of society. Application of this set of values can be regarded as a departure from "objectivity" so deep and broadly endorsed by the culture as to be inescapable. As a people, we cannot claim neutrality with respect to these values without divesting ourselves of our history, our origins as a nation, and, indeed, our very identity.

No foundation, therefore, any more than any other institution, can be totally "objective," because the human beings who manage it have values that shape their judgments and hence the foundation's collective judgment. To ask that a foundation have no identifiable values as a condition of its engagement in public policy matters is therefore asking the impossible.

Even so, how far foundations should go in allowing the personal values of trustees and officers to influence their public policy activities is a difficult question to answer and one that has bothered every thoughtful person who has ever worked for a foundation. There is a point at which generalized values pushed into ever deeper levels of specificity may somehow turn into particular political and social biases. At this point, those who manage foundations have begun to ride personal hobbyhorses, in violation of the foundation's public trust.

The challenge, then, is to find the dividing line between the legitimate application of values and nonlegitimate partisanship in behalf of a cause. It can be argued that the very choice of a grant recipient can represent a crossing of that line where the agency involved has stated purposes that tend to give it a particular point of view. To withhold support solely for this reason would, however, be both unnecessary and unfair and is certainly not required by the tax law.

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Unquestionably this is treacherous ground. There are no rulebooks or manuals to supply easy reference answers to the almost infinite variety of situations that will be encountered. Answers, if there are any, can ultimately be found only in experience, common sense, and, most importantly, in a willingness on the part of foundation officers to be honest about their own motives and those of the proposed grant recipient.

There are, however, some practical safeguards a foundation can employ to minimize its risks. When a foundation takes an action it believes will affect public policy, it has a duty to inform itself as fully as it can about the policy area in question, to seek competent advice, and to weigh most carefully the consequences of its action. Only on the basis of the most thorough, penetrating, and deliberate staff work is it justified in going ahead. Specifically, the foundation can check with the greatest care to find out the kind of record an organization it proposes to support and the people running it have established in the past. Is there evidence that the organization, within its frame of reference and stated purposes, has been reasonably objective in what it has done? Has it, for example, employed qualified researchers or other personnel in its work? Has it shown itself willing to publish all its findings, contrary as well as favorable? Has it ever used broadly-based advisory committees in its projects? Does it have a reputation for fairness?

Alternatively, has the organization left behind it a trail of militant partisanship, in which ends have clearly been used to justify means? Has it, under the guise of publishing the results of research, disseminated what is little more than propaganda or unsupported opinion? Has it used research simply to "prove" an already established case?

A foundation can test its own integrity by asking itself whether it would be willing to publicize fully the purposes and circumstances of a proposed grant and later report openly to the public on the outcome. If such a prospect makes it uncomfortable, the chances are that it suspects, but has been unwilling to recognize overtly, that its proposed grant recipient has a hidden agenda of politically partisan activity.

Beyond these practical approaches to the problem, probably the only protection available to a foundation lies in having a diversified board of trustees and staff in which a reasonably wide variety of *experience* in the nation's life is represented. If there is too much homogeneity in a foundation's management—homogeneity of occupational or professional background, economic status or interest, social perspective, or political persuasion—there is likely to be no one involved at the critical moment of decision to challenge the assumptions underlying a proposed course of action.

Allied with the issue of values and objectivity is the ancient question that has always troubled mankind: How is truth to be known? In contemporary terms, what is good public policy and how can it be discovered? Can a foundation tell whether it is acting in the best interests of the nation when it

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follows a given course? Can it be sure it is not doing more harm than good? How can it know whether its actions will be of any lasting benefit to those it seeks to help?

There are, of course, no final, convincing responses to these questions, and if one were to worry about them too much, total paralysis would be the inevitable result. Nevertheless, it is a serious matter—one that cannot be dismissed with the cavalier comment that what "seems right" at the moment of decision is justification enough for plunging ahead.

Although the problem of how to divine what is helpful and what is harmful in the search for beneficial public policy plagues all policy areas, nowhere is it more difficult than in the complex, loosely-defined area known as social justice. Among the myriad issues in this field that foundations have wrestled with are such matters as rectifying the results of historical discrimination against women and blacks and other minorities, protecting the rights of children, school integration, open housing, bilingualism in education, school decentralization and a host of others. These are immensely complicated issues, fraught with many previous public policy failures, bedeviled by ambiguities, moral dilemmas, shifting currents of thought, and constant new problems, and, finally, exacerbated by the militancy of many of the people foundations must work with, stemming from their understandable feelings of rage and frustration at the slow pace with which society has dealt with their concerns. Although the need to seek social justice is an imperative that arises from the American Creed, the path to it is often obscure. The possibility that foundations will make mistakes in this area, however skillfully and conscientiously they go about their business, cannot be avoided—a risk to which governmental bodies, be it said, are equally prone. Nonetheless, among all public policy areas needing foundation attention, the case for social justice is probably most compelling.

A third problem for foundations which feel a responsibility to be involved in the illumination of public policy issues is that of reconciling the desirability of a flexible openness of mind, so that opportunities can be seized wherever and however they appear, with the equal desirability of sticking to established program areas where the foundation can operate sure-footedly and in the knowledge that it is furthering agreed program goals. There are good arguments to be made on both sides. The answer, perhaps, is to lean toward program restrictiveness in order not to end up with a hodge-podge of superficial, widely-scattered and non-mutually-supporting initiatives, but to be open to an occasional opportunity for public policy service in other areas where the need is great and the chances of success substantial. One of the most important contributions Carnegie Corporation ever made, for example, was in its response to a suggestion out of the blue that it create a national commission on educational television, an area in which it had no program and only the sketchiest of experience.

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One of the more baffling problems faced by foundations when they engage in the process of public policy formation is explaining to the public the inherent limits of their "accountability." Foundations are accountable—and strictly accountable—to the Internal Revenue Service and to state authorities for the integrity of their financial dealings and for their adherence to the laws governing charitable organizations. Beyond this, many foundations, including Carnegie Corporation, have always felt a sense of accountability directly to the public arising out of their charitable mission to serve the public good. As part of this broader sense of accountability, they have recognized an obligation to inform the public about what they are doing and, therefore, have issued comprehensive annual reports, press releases and other publications which they have made widely available.

When, however, a foundation becomes involved in the business of helping to develop public policy, especially in a controversial realm such as social justice, many people seem to assume that it has taken on responsibility for a third level of accountability—accountability for the *results* of the work it has financed. A foundation, however, by the very character of its relationship to grant recipients, in which their independence and freedom of expression must be respected, cannot take responsibility for the validity of the ultimate product. It can take responsibility only for its own initial judgments with respect to the quality and integrity of those whom it decided to support. This position is partially modified, of course, when a foundation deliberately decides to help in the dissemination process, for such a decision in itself says that the product is at least considered worthy of public attention, whether the foundation fully endorses it or not. Nonetheless, the product remains someone else's and is not directly the foundation's.

From the foundation point of view, this seems an entirely reasonable posture, conforming as it does to the canons of academic freedom and to the right to independence of private organizations. To some public officials, members of the press and to much of the public, however, such a disclaimer is hard to understand, and may seem disingenuous or even evasive. If a foundation isn't willing to accept responsibility for what its grant recipients do when this clearly affects the formation of public policy, it should not make such grants, these critics would contend. Alternatively, they seem to imply that the foundation should somehow find a way to control or "discipline" its grantees. Such views are particularly strongly held when the organization supported by the foundation is assumed, because of its very purposes, to have a commitment to one side or another of a public policy issue, although freedom from such a commitment is by no means a requirement of charitable status.

The chances that a foundation will be held accountable for the results of policy-related work it supports are no doubt increased by the difficulty which the press, news magazines and other media sometimes face in reporting such findings. Frequently these findings are complex, subject to important

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qualifications, and heavily dependent for comprehensibility on full exposition of a surrounding context. Thus they do not always lend themselves to the requirements for brevity and newsworthiness of the media. There is simply a basic misfit in some instances between the media and the nature of scholarly communication, which is neither's fault. But the attempt to reconcile this difference does sometimes lead to misinterpretation of findings and subsequent public misunderstanding, which, once established, is very hard to correct.

Although a foundation can and must take every opportunity to explain to the public why it cannot be held responsible for the ultimate results of the work it supports, as distinct from the quality of its original decision-making in respect to a grant, this is an area where there will always be a potential for public misunderstanding. When controversy develops and certain groups become emotionally aroused, the human need to find someone or something to blame seems to be overpowering. In such situations, whatever their disclaimers, foundations will come in for a certain amount of criticism, and, however unjustified this may be, it perhaps isn't altogether a bad thing as a reminder to them that in an open society they can never expect to occupy a totally protected position immune from the give-and-take of everyday life.

In summary

Whatever is said about the right of foundations to engage in activities designed to influence the development of public policy for the nation, there will be some, both inside and outside the foundation field, who remain skeptical. They may still have a vague feeling of uneasiness about such activity, perhaps resulting from the antipathy to foundations aroused in 1969, or perhaps from the slightly anomalous position foundations seem to occupy in our society.

People of this outlook should in fairness weigh several considerations. First, foundations generally were reminded during the painful proceedings of 1969 of some long-standing rules of good foundation practice, especially the importance of meticulous staff work and the need to be well informed about the actions of grant recipients. They also had cause to consider, perhaps more deeply than ever before, the question of what distinguishes the legitimate application of values in grant-making from using grants improperly to advance partisan causes.

Secondly, it must be recognized that there are real, built-in limitations to the degree of influence which foundations, even large ones, or, for that matter, groups of foundations working together, can exercise. Among all the many private sector groups which play a part in the complex process of public policy formation, foundations are only one voice. In comparison with the prestige and financial power of government agencies and the political power of private pressure groups, their capabilities are small indeed. Ulti-

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mately, whatever they do is subject to the harsh rule of the market place. Their products enjoy no automatically privileged status because they have a foundation label on them, and they are certainly not immune from criticism. They have to compete, along with rival products put forward by others, in a kind of public opinion bazaar, to find favor with the public and make their way into new or improved public policy, or to be rejected and go onto the scrap heap. Although laws which restrict direct foundation interference in the legislative process are considered necessary by some people, it is the discipline of this open, competitive process in this country which provides the best, and probably only truly necessary, guarantee against a foundation becoming too influential.

Finally, there remains the spectre that the entire foundation field, with its 30,000 or more members, might unite to use its collective strength to influence public policy on some important national issue. Such a thought is really quite ludicrous, so insignificant are most of this number in size and so wide is the diversity among foundations in their interests and in their philosophical outlook. Indeed, on almost any issue one could think of, people connected with foundations would almost certainly be found on each side of it, reflecting the division of opinion on the issue in the nation at large.

One can conclude that foundations do have a legitimate—indeed essential—role to play in public policy formation, although no one should doubt there are some real risks involved. Nevertheless, if the role is played conscientiously and is informed at every stage by candor, openness and integrity, it seems likely there will be a sufficient degree of overall public tolerance, perhaps even regard, for foundations to ensure their continued independence. Certainly the alternative, which is for them to operate with such cautiousness that they transform themselves gradually into quaint, anachronistic, and ultimately irrelevant, appendages of American society, must be regarded both as a clear denial of the public interest that inheres in all foundations and a violation of the public trust which those who manage them have unquestionably accepted.

Alan Pifer

President

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